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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA

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5 HARRY J. WILLIBY,  
6 Plaintiff,

7 v.

8 MARK ZUCKERBERG, et al.,  
9 Defendants.

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Case No.18-cv-06295-JD

11 **ORDER RE IFP APPLICATION AND  
12 TRO/INJUNCTION MOTIONS**

13 Re: Dkt. Nos. 2, 3, 4

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15 Pro se plaintiff Williby has applied to proceed in forma pauperis. Dkt. No. 4. The request  
16 is denied. The complaint is dismissed, and all pending TRO and injunction motions are denied.

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18 In reviewing an application to proceed in forma pauperis, courts may dismiss a case sua  
19 sponte if the party applying for in forma pauperis status files a frivolous action, fails to state a  
20 claim on which relief may be granted, or seeks monetary relief against a defendant who is immune  
21 from such relief. 28 U.S.C. § 1915(e)(2)(B). To make the determination under Section  
22 1915(e)(2)(B), courts assess whether there is an arguable factual and legal basis for the asserted  
23 wrong, “however inartfully pleaded.” *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.  
24 1984) (internal quote omitted); *see also Williams v. Madrid*, 609 F. App’x 421 (9th Cir. 2015).

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26 The complaint is dismissed because the First Amendment claim is not based on any state  
27 action and purports to sue a business that is not a government entity. *Hudgens v. N. L. R. B.*, 424  
28 U.S. 507, 513 (1976). Facebook’s policies for moderating posts, including those relating to  
elections, do not constitute state action. Dkt. No. 1 ¶¶ 14-15. In the absence of a cognizable legal  
claim, the TRO and injunction motions are denied.

1 Plaintiff may file an amended complaint by **November 12, 2018**. Failure to amend by that  
2 date will result in dismissal of this case with prejudice for failure to prosecute. *See* Fed. R. Civ.  
3 P. 41(b).

4 **IT IS SO ORDERED.**

5 Dated: October 22, 2018

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JAMES DONATO  
United States District Judge

